

Unilateral Acts

A History of a Legal Doctrine

Betina Appel Kuzmarov

1173917

First published 2018
by Routledge
711 Third Avenue, New York, NY 10017

and by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2018 Betina Appel Kuzmarov

The right of Betina Appel Kuzmarov to be identified as author of this work has been asserted by her in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Names: Kuzmarov, Betina, 1975-

Title: Unilateral acts : a history of a legal doctrine/Betina Appel Kuzmarov.

Description: Abingdon, Oxon ; New York, NY : Routledge, 2018. |

Series Routledge research in international law

Identifiers: LCCN 2018006422 | ISBN 9781138060180
(hardback)

Subjects: LCSH: Unilateral acts (International law)

Classification: LCC KZ1262.J87 K89 2018 | DDC 341.26—dc23

LC record available at <https://lcn.loc.gov/2018006422>

ISBN: 978-1-138-06018-0 (hbk)

ISBN: 978-1-315-16316-1 (ebk)

Typeset in Galliard
by Apex CoVantage, LLC

Contents

<i>Preface</i>	ix
<i>Acknowledgements</i>	xii
1 Introduction	1
<i>What Is a Unilateral Act?</i>	1
<i>Unilateral Acts and the History of International Law</i>	5
<i>Unilateral Acts in the Nineteenth Century</i>	6
<i>The Aims and Structure of This Book</i>	12
2 Unilateral Acts as Consent-Based Agreements	16
<i>The Monroe Doctrine: A Doctrine of Non-Intervention by a Great Power</i>	19
<i>The Monroe Doctrine: From Political Act to Special Law</i>	21
<i>Conclusion</i>	30
3 Unilateral Acts as Obligations <i>Erga Omnes</i>	33
<i>The Nuclear Tests Cases and Acts Erga Omnes</i>	35
<i>Obligations Erga Omnes</i>	40
<i>The Problem with Identifying Unilateral Acts That Were Obligations Erga Omnes</i>	43
<i>Intention</i>	43
<i>Autonomy</i>	44
<i>Revocation</i>	48
<i>Unilateral Acts as Unilateral Acts Erga Omnes Since the Nuclear Tests Cases</i>	50
<i>Unilateral Act as Obligation Erga Omnes: The Creation of a Universal Obligation</i>	54
<i>Conclusion</i>	55

viii *Contents*

4	Unilateral Acts as Estoppels	57
	<i>Estoppels</i> 59	
	<i>Substantive Estoppel</i> 60	
	<i>Estoppels as a Bar to Proceeding before the ICJ</i> 65	
	<i>Unilateral Acts and Estoppel</i> 69	
	<i>Estoppels and Good Faith</i> 70	
	<i>Conclusion</i> 72	
5	Unilateral Acts and the Progressive Development of International Law	74
	<i>The ILC and Unilateral Acts</i> 76	
	<i>Intention</i> 77	
	<i>Autonomy</i> 83	
	<i>Revocation</i> 85	
	<i>The ILC, Unilateral Acts, and Sovereignty and Universality</i> 88	
	<i>Conclusion</i> 90	
6	Unilateral Acts, Politics, and International Law	92
	<i>The Unilateral Declaration of Independence of Kosovo</i> 93	
	<i>Legalization and Kosovo's Unilateral Declaration of Independence</i> 103	
	<i>Conclusion</i> 106	
7	Conclusion	108
	<i>Works cited</i>	114
	<i>Index</i>	124